

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application and for indicating that claims 11-16, 18-25, and 31 contain allowable subject matter.

Disposition of Claims

Claims 1-34 are pending in this application. Claims 1 and 32 are independent. The remaining claims depend, directly or indirectly, from claims 1, and 32.

Attorney Docket Number

Please change the attorney docket number in the USPTO records for this case to 17452/005001.

Objections to the Specification

The Specification is objected to by the Examiner for failing to include appropriate subheadings and proper arrangement. The Specification has been amended to insert appropriate subheadings before each section. Accordingly, withdrawal of this objection is respectfully requested.

Claim Objections

Claims 1-34 are objected to for minor informalities. Specifically, the Examiner points out that each independent claim must begin with "A" and each corresponding dependent claim must begin with "The." The claims have been amended in accordance with the Examiner's suggestions. Accordingly, withdrawal of these objections is respectfully requested.

Rejection(s) under 35 U.S.C. § 112

Claims 1-31 and 33 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for lacking proper antecedent basis. Claims 1, 3, and 33 have been amended to correct all antecedent basis issues. Pending dependent claims are no longer deficient for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection(s) under 35 U.S.C. § 102

Claims 1-3 and 32 are rejected under 35 U.S.C. § 102(a) as being anticipated by US Patent No. 6,885,801 (“Shankar”). This rejection is respectfully traversed.

The purpose of a 37 CFR § 1.131 declaration is to overcome a prior art rejection by proving invention of the claimed subject matter by the Applicants prior to the effective filing date of the reference relied upon in the rejection. *See* MPEP § 715.01. A Rule 1.131 declaration shall be considered when it is presented prior to a final rejection. *See* MPEP § 715.09.

As evidenced by the enclosed 37 C.F.R. §1.131 declaration, made by Aymeric Perchant, a co-inventor of the present application, and the attached submissions of laboratory notebook pages along with the spreadsheet detailing the content of each of the laboratory notebook pages, the claimed invention (*i*) was conceived during or before July 2001, which is prior to the effective filing date of Shankar, *i.e.*, prior to December 6, 2001, and (*ii*) was subsequently constructively reduced to practice with due diligence exercised by the inventors of the present application. Accordingly, Shankar is not prior art to the present application and withdrawal of the 35 U.S.C. §102(e) rejection is respectfully requested.

Rejection(s) under 35 U.S.C. § 103

Claims 4-5 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of NPL document “Hybrid Image Segmentation Using Watersheds and Fast Region Merging” (hereinafter “Harris”). Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of Harris, and further in view of US Patent No. 4,926,257 (“Miyazaki”). Claims 26-30 and 34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shankar in view of US Patent No. 5,764,809 (“Nomami”). For the reasons set forth below, these rejections are respectfully traversed.

Each of the aforementioned §103 rejections are based on Shankar as the primary reference. As described above, Shankar is not valid prior art to this application, as evidenced by the attached declaration under 37 C.F.R. § 1.131, accompanying laboratory notebook pages, and the spreadsheet detailing the contents of the notebook pages. As stated in the declaration, the present invention was conceived and reduced to practice with due diligence prior to the effective filing date of Shankar (*i.e.*, prior to December 6, 2001). In view of the above, Shankar may not be used to support the aforementioned 35 U.S.C. § 103 rejections. As the various secondary prior art references admittedly fail to teach all of the elements of the claims, as is evidenced by the fact that they are cited solely to teach specific features recited in dependent claims, it is clear that the various secondary prior art references, whether considered alone or in combination, cannot render the claims of the present application obvious.

In view of the above, withdrawal of the aforementioned rejections with respect to the dependent claims is respectfully requested.

Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 17452/005001).

Dated: October 30, 2008

Respectfully submitted,

By JPO #45,079
Jonathan P. Osha ~~Toronto Schlesinger~~
Registration No.: 33,986
OSHA · LIANG LLP
909 Fannin Street, Suite 3500
Houston, Texas 77010
(713) 228-8600
(713) 228-8778 (Fax)
Attorney for Applicant

Attachment (Declaration Pursuant to 37 CFR § 1.131)